Medical-Legal Considerations for the Flight Surgeon Investigator

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Overview

- What is an MLC anyways?
- The Flight Surgeons Role
  - Provider Versus Investigator
- Specimen Collection
  - Legal Versus Medical
- Consent v Compelling
- Jurisdictional Issues
- Access to Medical Information

What Is An MLC?

- Senior Captains/Majors selected to specialize in Medical Law (12 AF-wide)
- Stationed at the larger AF Medical Centers
- Consultants to MTF’s and Base Legal Offices
- Review medical malpractice claims for 18 base region (not WHMC’s claims)

What Do MLCs Do?

- Legal counsel to Commander:
  - Federal and State law questions
  - Inter-Agency Agreements (TAA’s, MOU’s)
  - Research (Animal and Human)
  - Credentialing/Privileging and Nurse Peer Review Actions
  - Government Ethics (e.g., Gifts, Travel)
  - Biomedical Ethics

The Flight Surgeon As Provider

- Standard: Exercise of the degree of skill, knowledge, and care ordinarily possessed by members of the medical profession under similar circumstances in providing patient care

Dr-Patient Privilege

- Executive Order 13140, 1 October 1999
  - “psychotherapist-patient privilege”
- MRE 513 - limited evidentiary privilege
  - cases arising under the UCMJ
- AFI 44-109

The Flight Surgeon As Investigator

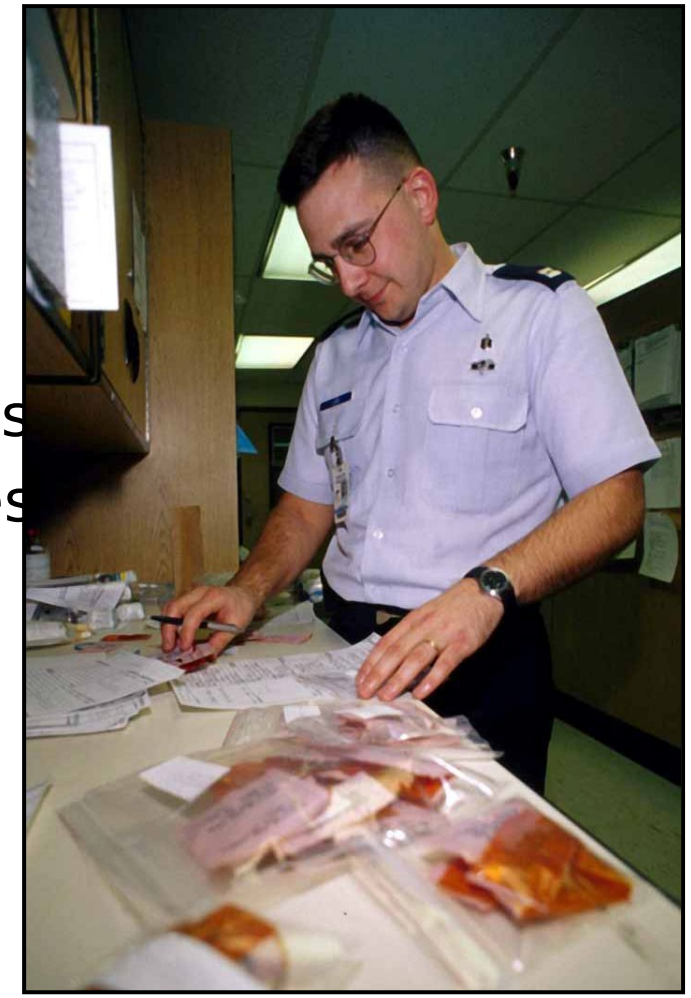
- Medical analysis of evidence
  - Human factors
  - Drugs, past medical history, etc.
- Basis
  - medical records
  - autopsy (coroner’s report)

Investigator (Cont)

- Privilege
  - Deliberative process (i.e., findings, conclusions, recommendations)
- Punitive, disciplinary, adverse administrative action cannot follow as a result

Specimen Collection: Medical

- Patient Care Use Only!!
- Exceptions:
  - Reasonable Suspicion
  - Civil Actions
  - Used Solely for SIB Purposes
  - Used Solely for AIB Purposes



Specimen Collection: Legal

- May Be Used For UCMJ Purposes
  - Search and Seizure
  - Probable Cause
  - Consult Commander
- Nonconsensual Taking
  - Blood v. Urine
  - Other non-intrusive collection
- Seek Legal Advice!

Consent

- Depends on Status of Witness
  - Military Members: Yes
  - Civilian DoD Employees: Yes
  - Contractor Employees: Terms of Contract
  - Civilians: Persuasion Only

Who Can Be Compelled?

- Flight Crews If Class A/B Mishap
- Military If Factors In Mishap Sequence
  - Commander’s Judgment
  - Class A/B/C Mishaps

Who Can Be Compelled?

- DoD Civilians
  - If Evidence They May Have Caused Mishap
  - Consult Base SJA and Personnel
- Guard
  - Consent
  - Can Compel if Title 10
  - If Not Title 10, Place on Active Duty
    - Commander Orders

Who Can Be Compelled?

- Contractor Employees
  - If Factor In Mishap Sequence
  - But Only:
    - If Required By Contract
    - Or They Consent

Jurisdictional Issues

- Autopsies: Civilian v. Military
  - On Base
  - Off Base
- AFIP
- AFME

Release of Medical Information

- Privacy Act (5 USC 552a)
- Basic Rule – obtain patient's consent
- Exceptions
  - OSI and Commanders with a legitimate need
  - DOD and other Federal, state and local governments/agencies with a proper and legitimate need
  - SIB/AIB Investigations
- If in doubt, consult with JA